

Abstrakt

A comparison of national trade mark with Community trade mark

The purpose of this thesis is to provide fundamental information about trademarks and their legal regulation. In my thesis I focus on the decision making practice of the ÚVP, the European Union Intellectual Property Office and I attempt to compare their argumentation at decision making practice. In order to compare the decision making of the two offices I decided, because their legislations are very similar and their comparison would not be of great significance.

Following the amendment by regulation no. 2424/2015 there have been some changes such as abolition of the necessity a graphical representation, the introduction of the so-called certification trade mark or the explicitly anchoring of the sound as a sign of a capable label.

After the novella in the thesis I analyzed the decisions of the two authorities in the matters of assessing the registrability of the signs applied for.

I have focused on the two absolute grounds for declaring incapability, namely the descriptiveness of the sign referred to in § 4 letter c) of the Act, respectively Article 7 subsection 1 letter (c) of the Regulation and the generality of the marking referred to in § 4 letter d) of the Act, respectively Article 7 subsection 1 letter d) of the Regulation. Each of the offices has a different line of argument in assessing the registrability of the signs applied for.

While the ÚPV has very extensive decisions, EUIPO largely refers to the case law of the Court of the EU or Tribunal. There is a great shift from the beginning of its decision-making practice in the decision-making of ÚPV. Contemporary decisions are much more justified. There are many tens of pages in the decision. At the beginning of the decision-making process, the decision was made by three parties.

From the decisions which I analyzed, I got the impression, that EUIPO has "stricter" criteria when assessing the registration capacity of the sign applied for. In several of the analyzed cases, EUIPO assessed the designation of a registered trade mark in the Trade Mark Register as a national trade mark but EUIPO refused the registration of the same trade mark.

The applicants' arguments that they have a trademark in the same wording registered in a Member State as a national trade mark with EUIPO are largely unaffected. EUIPO argues in this case that the EU trademark system is a stand-alone system that is self-sufficient and is not so dependent on national trademark systems. It is certainly interesting to note that from the studied EUIPO Decision from years 2009-2017, no application was rejected because of the

generic nature of the sign, that is, for the reason stated in Article 7 subsection 1 letter d) of the Regulation. The assessment of the eligibility for registration of trade marks, whether national or European, is largely subjective and it is a matter for the competent authority to decide whether to register a trade mark or to refuse registration.

